IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 94 of 2001

GANPAT RAM
V/S
SMT. MOHINI DEVI

Mr. NS ACHARYA for Mr. BL PUROHIT, for the appellant / petitioner

Mr. NM LODHA, for the respondent

Date of Order : 15.9.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties and perused the record. Both the learned courts below have decreed the suit for specific performance.

Assailing the impugned judgments and decrees, it is contended by the learned counsel, firstly, that learned trial court was in error in granting permission to lead secondary evidence regarding the agreement in question, as the pre-requisites, as required by Section 65 of the Evidence Act, have not been established. The other submission made is, that since the agreement is not signed by both the parties, specific performance could not be decreed. The last submission made is, that the learned courts below were in error in finding the plaintiff to be ready and willing to perform his part of the contract, as

the plaintiff herself has admitted, while in the witness box, that she had no money even at the time of execution of the alleged agreement.

I have considered the submissions.

So far the last contention about readiness and willingness is concerned, the plaintiff has clearly deposed that since at that time she was not possessed of sufficient money, it was agreed that the document will be got executed and registered within 5-10 days, and thereafter she received money by way of compensation, and also got repayment of money advanced by her. Thus, she has clearly deposed to be possessed means and was ready and willing to perform her part of the contract, and this, coupled with the fact, that the agreement is said to be dt. 11.6.86, and the suit has been filed on 4.9.86 itself. I do not find any error in the findings of the learned courts below about readiness and willingness.

Coming to the second question about agreement not being signed by both the parties, in my view, this contention also has no force, as in a suit for specific performance, it is not necessary that the agreement should be signed by the promisee also, and the learned counsel for the appellant also could not point out any legal authority to substantiate the submission.

Then, coming to the question of correctness of grant of permission to lead secondary evidence; in this regard a look at the record shows, that affidavit was filed by the plaintiff in support of the application, that she had handed over the original and photostat copy of the agreement to the counsel at the time of filing of the suit, and the photostat copy was filed along with the plaint, and during course of evidence when the original was demanded, search was again made, and despite best efforts the original could not be found, and therefore, permission was sought for leading secondary evidence. These submissions were not controverted on the side of the present appellant, nor any affidavit had been filed. In such circumstances, in my view, the learned trial court cannot be said to be in error in granting permission to lead secondary evidence. The photostat copy of the agreement was filed along with the plaint itself, and that has been duly proved by the oral evidence led by the plaintiff. Thus, this contention also has no force.

The appeal thus has no force, and the same is, therefore, dismissed summarily.

(N P GUPTA),J.

/Sushil/